IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

MFA.No. 1584 of 2001

O.P (MV).NO.2455/1997 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM.
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APPELLANT/ 3RD RESPONDENT IN M.V.O.P:

THE ORIENTAL INSURANCE CO. LTD., REPRESENTED BY THE DEPUTY MANAGER, MOTOR THIRD PARTY CLAIMS CELL, REGIONAL OFFICE, NORTH RAILWAY STATION ROAD, ERNAKULAM, COCHIN - 682 018.

BY ADV. SRI.M.JACOB MURICKAN

RESPONDENTS/ PETITIONERS & RESPONDENTS 1 & 2 IN M.V.O.P:
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1. **K.M. SUNITHA, W/O. LATE PAREEDKUTTY, MEKKADA VEETTIL, DOOR NO. 2/739, PULLUPALAM ROAD, COCHIN-1.**

2. **MUNEERA (MINOR), D/O. LATE PAREEDKUTTY, MEKKADA VEETTIL, DOOR NO.2/739, PULLUPALAM ROAD, COCHIN-1, REPRESENTED BY THE 1ST RESPONDENT (MOTHER) AS NEXT FRIEND AND GUARDIAN.**

3. **ALIMON (MINOR), S/O. LATE PAREEDKUTTY, MEKKADA VEETTIL, DOOR NO. 2/739, PULLUPALAM ROAD, COCHIN-1, REPRESENTED BY THE 1ST RESPONDENT (MOTHER) AS NEXT FRIEND AND GUARDIAN**

*4. **MOOSA, MEKKADA VEETTIL, DOOR NO. 2/739, PULLUPALAM ROAD, COCHIN, *(DIED).**

M.F.A. NO. 1584/2001:

5. PATHUMMA, W/O. MOOSA, MEKKADA VEETTIL, DOOR NO. 2/739, PULLUPALAM ROAD, COCHIN-1.

6. FRANCIS K. KURIAKOSE, S/O. KURIAKOSE, KAVUMPURATH HOUSE, ELANGAVOM, VARAPETTY-P.O., KOTHAMANGALAM.

7. M.M. YOUSUF, S/O. MOHAMMED, MECHKAL HOUSE, PERUMATAMKARA DESOM, VELLOORKUNNAM VILLAGE, MUVATTUPUZHA TALUK, ERNAKULAM.

***ADDL.R8. NOORJAHAN, D/O. MOOSA, RESIDING AT DOOR NO. 2/1002, MEKKADA HOUSE, KONCHERRY, PULLUPALAM ROAD, KOCHI-1.**

***R1 TO R3 AND R5 ARE RECORDED AS THE LRS. OF THE DECEASED R4 AND ADDL.R8 IS IMPLEADED AS THE OTHER LEGAL REPRESENTATIVE OF THE DECEASED R4 VIDE ORDER DT. 25/01/07 ON I.A. 148/07.**

BY ADV. SRI.VARGHESE P.THOMAS FOR R6 & R7, SRI.R.SUDHISH FOR R1, R2, R3,R5 AND ADDL. R8, SMT.M.MANJU.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 10/10/2007, ALONG WITH M.F.A NOS.25/2002 & 26/2002 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 450/2002 IN M.F.A. NO. 1584/2001

DISMISSED

SD/- J.B.KOSHY, JUDGE.

10/10/2007. **SD/- K.HEMA, JUDGE.**

//TRUE COPY//

prv.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.Nos.1584 of 2001,
25 & 26 of 2002

Dated 10th October, 2007

JUDGMENT

Koshy,J.

Three persons sustained injuries while they were travelling in a mini lorry (goods vehicle) when it dashed against a compound wall on 11.8.1994. Out of the three persons, one died due to the injuries sustained in the accident and his dependents filed O.P.(M.V)No.2455 of 1997. Claimant in O.P.(M.V)No.2456 of 1997 sustained severe injuries and claimant in O.P.(M.V)No.2457 of 1997 sustained only personal injuries. The Tribunal calculated compensation under the Motor Vehicles Act and directed the insurance company to deposit the amount as the vehicle was covered by a valid insurance policy. Third respondent insurance company filed these appeals contending that since the accident occurred prior to the amendment of the Motor Vehicles Act, the passengers in a goods vehicle are not entitled to compensation. Dependents of the passenger who died (O.P.(M.V)No.2455/1997) and claimant in O.P.(M.V)No.2456 of 1997 claimed that they were travelling with the goods as salesmen. Insurance company disputed that also. Even if they were travelling with the goods, since the accident occurred prior to the amendment of the M.V. Act by Act 54 of 1994 with effect

from 14.11.1994, they cannot claim compensation from the insurance company. We agree with the above contention. Therefore, insurance company ought to have been exonerated from the liability and it is for the claimants to get the amount ordered to be recovered from the owner and driver of the vehicle who are responsible for the accident as held by the Apex Court in **National Insurance Co. Ltd.** v. **V.Chinnamma and others** ((2004) 8 SCC 697). It is submitted that part amount was deposited by the insurance company. The insurance company is given the right to recover that amount from the insured owner. Hence, M.F.A.Nos.1584 of 2001 and 25 of 2002 are allowed.

2. With regard to the claimant in O.P.(M.V)No.2457 of 1997, his claim was that he was a cleaner in the lorry. That was not challenged. He was aged 19 at the time of accident. Therefore, the factor is 225.22. There is 25% disability. We are of the opinion that compensation for 25% loss of earning capacity can be awarded based on the above medical certificate. Since the accident occurred before the amendment of the Workmen's Compensation Act by Act 30 of 1995, the maximum monthly income that can be taken is only Rs.1,000/=. If that be so, compensation payable will be Rs.1,000 x $\frac{50}{100}$ x 225.22 x $\frac{25}{100}$ = 28,152/=. Tribunal awarded Rs.46,500/=. The amount payable to the claimant will be only

Rs.28,152/= with proportionate cost. So, the claimant can realize only the above amount with 12% interest from the date of accident till its deposit from the insurance company as provided under the Workmen's Compensation Act. M.F.A.No.26 of 2002 is partly allowed.

All appeals are disposed of accordingly. Parties to bear their costs in the appeals.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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